

2025 LiveLaw (SC) 791

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION
J.B. PARDIWALA; J., R. MAHADEVAN; J.
SPECIAL LEAVE PETITION (CIVIL) NO. 21747 OF 2025; 11 AUGUST, 2025

TIME CITY INFRASTRUCTURE AND HOUSING LIMITED LUCKNOW
versus
THE STATE OF U.P. & ORS.

Code of Civil Procedure, 1908 (CPC) - Order XXXIX Rule 3 – Held, *ex-parte* injunction must be vacated if plaintiff fails to comply with mandatory conditions of Order XXXIX Rule 3 CPC - This ensures that a party being restrained without a hearing is informed of the reasons and the applicant must satisfy the court about gravity of situation - It stressed that non-compliance with the proviso to Rule 3 of Order XXXIX would vitiate the order, as Parliament prescribed a specific procedure for exceptional circumstances - Upheld order of High Court - Petition dismissed. [Relied on *Shiv Kumar Chadha v. MCD* 1993 SCC (3) 161; Paras 5-8]

ORDER

1. This petition arises from the order passed by the High Court of Judicature at Allahabad (Bench Lucknow) dated 24-7-2025 in WritC No.6701/2025 by which the petition filed by the respondents – herein (original defendants) came to be allowed thereby set asiding the order passed by the Civil Judge (Senior Division) granting *ex parte* injunction as prayed for by the petitioner – herein in Civil Suit No.447/2025. The Trial Court passed the following order dated 9-5-2025 while granting *ex parte* injunction in favour of the petitioner – herein (original plaintiff):-

“Heard on the arguments of the Ld.Counsel for the plaintiff on the Application C-6 with affidavit C-7 of the plaintiff on ad interim Injunction.

The plaintiff has filed the Extract of Khatoni of Year 14251430 C-11/1 Ta 10 at serial no.C-10, Certified copy of Agreement to Sell Dated.21.03.2015 at serial no. C-12/1 Ta 11, Certified Copy of the Sale Deed Dated 30.04.2025 at serial no. C-13/1 Ta 11 in support of their prayer in the suit.

It is the stated by the Counsel for the plaintiff that on 21.06.2015, after the full and final payment Rs.3,60,12,782/(Rupees Three Crores Sixty Lakhs Twelve Thousand Seven Hundred and Eighty-Two Only) to the defendant No.1 as Sale Consideration, the defendant No.1 had handed over the peaceful physical possession of the land to the plaintiff. After the physical possession of the Suit Land, the plaintiff had merged the said plot of land in its adjoining plotting sites and invested huge funds in terms of lacs and lacs of rupees to develop that suit land into plotting for sale. The plaintiff company had also developed the suit land with good roads and also constructed 02(two) offices on the same. The plaintiff company had been in with continuous physical possession of the said suit property till date.

The plaintiff has prayed for specific relief against the defendants on the suit property/land bearing Gata/Land No.452/1 Rakba 0.057 Hectre, Gata/Land No.607 Rakba 0.300 Hectre, Gata/Land No.615 Rakba 0.162 Hectre, Gata/Land No.616 Rakba 0.162 Hectre Gata/Land No.634 Rakba 0.304 Hectre with a Total Area of 5 Kita Rakba 0.985 Hectre, which is situated at Village-Kurouli, Pargana & Tehsil-Nawabganj, Dist- Barbanki. Thus, prima facie the case is made out by the plaintiff. In the light of the facts and circumstances and for the protection of the suit property/land and in order to prevent further litigation, Parties should maintain the status quo in the interest of justice.

ORDER

Parties are directed to maintain status quo on the title and possession of the suit property/ land bearing Gata/Land No.452/1 Rakba 0.057 Hectre, Gata/Land No.607 Rakba 0.300

Hectre, Gata/Land No.615 Rakba 0.162 Hectre, Gata/Land No.616 Rakba 0.162 Hectre Gata/Land No.634 Rakba 0.304 Hectre with a Total Area of 5 Kita Rakba 0.985 Hectre, which is situated at Village-Kurouli, Pargana Tehsil-Nawabganj, Dist- Barbanki. till the next date of hearing and parties are also directed not to sell the suit property/land till the next date of hearing.

Put up for further proceedings on 29.05.2025 for the disposal of Application No. C-6, Accordingly notice be issued to the defendants for the next date of hearing. This order will be binding on the parties those who are made parties in the present suit. This order is not binding on any Third Party who has interest in the Suit Property/Land.

The plaintiff to pursue the matter and to abide by the direction under Order 39 Rule 3 of C.P.C.

The Amin is appointed as Local Commissioner and directed to visit the spot for inspection with an advance notice to the Counsels of the Parties to be present on the spot. He is also directed to inspect the following points and file the report.

- 1. The Clear cut boundary of the Suit Property/Land is to be mentioned in the Report.*
- 2. The clear cut/ accurate details of measurements of the Suit Property/Land are to be mentioned in the Report.*
- 3. The reference map/naxa has to be prepared and to be attached for reference in the Report.*
- 4. The Reference map /naxa should contain and mention the particulars about the Construction/s, Trees and any other items found on the suit property.*
- 5. The Reference Map/Naxa of the Suit property is to be prepared on the material which is allowed to prepare the Map/Naxa and not on the ordinary paper.*
- 6. The Area Amin is directed to submit the said report with Map/Naxa in the scaly filed book format and also to produce the self-attested identity proof of both the parties for the record of their presence in the proceeding held by the Local Commissioner/Area Amin.*

The Local Commissioner/Area Amin is directed to file the said inspection report before this Court within 15 days. The plaintiff is directed to contact the Amin with immediate effect. The Alhmad/Office is directed to dispatch the order with immediate effect. Put up for further proceedings on date fixed.”

2. The respondents (herein) (original defendants) being dissatisfied with the order passed by the Trial Court, referred to above, invoked the supervisory jurisdiction of the High Court under Article 227 of the Constitution and challenged the same. The High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution thought fit to interfere with the order passed by the Trial Court and set aside the same. The findings recorded by the High Court in its impugned order read thus:-

“27. From the plaint and the agreement to sell which has been placed, it is evident that the entire suit is nothing but a legal jugglery. A registered agreement to sell was executed in favour of the respondents in the year 2015. The time of performance in the agreement was one year with a provision that in case the sale deed is not executed within a period of one year, the same can be executed through Court. No suit for specific performance has admittedly been filed by the respondents for execution of sale deed in their favour. The agreement to sell does not even record that the respondents are being put in possession in pursuance to the agreement to sell so as to enable the respondents to claim the benefit flowing from Section 53A of Transfer of Property Act. The suit in question was filed after the limitation for filing the suit for specific performance had come to an end. The prayer in the suit besides mandatory injunction, is to declare the sale deed dated 30.04.2025 as null and void. The entire suit does not disclose as to how the respondents

claim to be the owner of the property which has been sold by virtue of the sale deed dated 30.04.2025.

29. Thus, the entire suit was based upon no claim with regard to ownership of the property or claiming any benefit of Section 53A of Transfer of Property Act. There is no relief for specific performance even in the suit filed in the year 2025. The trial Court has passed the order in a cursory manner, the trial Court has not considered the suit in its entirety. It has not even recorded any existence of a prima-facie case, the balance of convenience or irreparable hardship - the three sine qua non for grant of mandatory injunction. No reasoning as has been mandated in terms of proviso of Order 39 Rule 3 CPC has been recorded. The manner in which the injunction has been granted cannot be ignored by this Court while exercising its power under Art. 227 of the Constitution.

32. District Judge, Barabanki is directed to transfer Suit No. 447 of 2025 to any other Court of competent jurisdiction except Civil Judge (Senior Division), Court No. 20, Barabanki.

33. The Court to which the proceedings will be transferred shall decide the injunction application afresh within a period of 15 days as the objections have already been filed.

34. In view of the manner in which the order is passed, the same cannot be appreciated. Thus, Senior Registrar of this Court is directed to place a copy of the order passed by the Civil Judge (Senior Division), Court No. 20, Barabanki along with a copy of the suit, a copy of the injunction granted and a copy of this order before the Administrative Judge of District Barabanki who may, if deemed appropriate, take action on the administrative side."

3. Heard Mr. Nachiketa Joshi, the learned counsel appearing for the petitioner (original plaintiff).

4. Order 39 Rule 3 of the Code of Civil Procedure reads as under:-

"Rule 3. Before granting injunction, Court to direct notice to opposite party.— The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent."

5. Looking to the scheme of Order 39, CPC it is clear that ordinarily an order of injunction may not be granted *ex parte*. The opposite party must be issued a notice and heard before an injunction may be granted. Rule 3 carves out an exception in favour of granting an injunction without notice to the opposite party where it appears that the object of granting injunction would be defeated by the delay. Conferment of this privilege on the party seeking an injunction is accompanied by an obligation cast on the court to record reasons for its opinion and an obligation cast on the applicant to comply with the requirements of Clauses (a) and (b) of the proviso. Both the provisions are mandatory.

The applicant gets an injunction without notice but subject to the condition of complying with Clauses (a) and (b) above said.

6. We may refer to several observations made by this Court in *Shiv Kumar Chadha v. MCD*, reported in 1993 SCC (3) 161. Although the observations have been made primarily on the obligation of the Court to record the reasons, yet in our opinion they equally apply to the obligation cast on the applicant by the proviso. The provisions are mandatory. This Court observed thus:-

“The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said “the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party”. The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite party being of the opinion that the subject of granting injunction itself shall be defeated by delay. The condition so introduced is that the court “shall record the reasons” why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3 the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authorities concerned to record reasons before exercising power vested in them. In respect of some of such non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle that if a statute requires a thing to be done in a particular manner it should be done in that manner or not all.”

(Emphasis supplied)

7. We are of the opinion that if the court is satisfied of noncompliance by the applicant with the provisions contained in the proviso then on being so satisfied the court which was persuaded to grant an *ex parte ad interim* injunction confiding in the applicant that having been shown indulgence by the court he would comply with the requirements of the proviso, it would simply vacate the *ex parte* order of injunction without expressing any opinion of the merits of the case leaving it open to the parties to have a hearing on the grant or otherwise on the order of injunction but *bipartite* only. The applicant would be told that by his conduct he has deprived the opponent of an opportunity of having an early or urgent hearing on merits and, therefore, the *ex parte* order of injunction cannot be allowed to operate any more.

8. However, having regard to the fact that now the hearing is to take place on 12-8-2025 i.e. tomorrow before the Trial Court and the Trial Court is to hear both the parties in so far as the prayer of the plaintiff for grant of appropriate injunction is concerned, we need not interfere with the impugned order. The Trial Court shall hear the plaintiff and

defendants and decide the injunction application filed by the plaintiff on its own merits in accordance with law, without being influenced in any manner by any of the observations made by the High Court in its impugned order.

9. With the aforesaid, the Special Leave Petition stands disposed of.
10. Pending applications, if any, also stand disposed of.

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